Visalia, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ROBERT MEYER, d/b/a MEYER TOMATOES, a sole proprietorship, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 88-CE-3-VI 17 ALRB No. 5

DECISION AND ORDER REMANDING PROCEEDINGS TO ADMINISTRATIVE LAW JUDGE FOR FURTHER EVIDENTIARY HEARING

This is a surface bargaining case. Charging Party United Farm Workers of America, AFL-CIO (UFW or Union) was certified by the Agricultural Labor Relations Board (ALRB or Board) as the exclusive bargaining representative of all the agricultural employees of Respondent Robert Meyer dba Meyer Tomatoes (Respondent) at Respondent's Salinas, Monterey County operations in 1975. (See certification issued in Case No. 75-RC-107-M.) A collective bargaining agreement entered into between Respondent and the Union in September, 1985 was set to expire on October 15, 1987. Prior to the expiration of that agreement, however, the Board certified a second unit represented by the Union and composed of Respondent's agricultural employees at its Visalia, California operations on August 20, 1987. (See certification issued in Case No. 87-RC-2-VI.)

Negotiations for a collective bargaining agreement at

both the Salinas and Visalia operations commenced in early October, 1987 and continued in desultory fashion for over a year until January, 1989. On January 25, 1988, the Union filed an unfair labor practice charge alleging that Respondent had violated its duty to bargain in good faith by refusing to discuss mandatory topics of bargaining, refusing to provide relevant information, making unreasonable proposals, failing to meet regularly and to be available for meetings, and failing to provide negotiators with sufficient authority to enter into binding contractual agreements. The General Counsel issued a complaint on these allegations on January 31, 1990.

An evidentiary hearing was held before Administrative Law Judge (ALJ) Thomas Sobel in Visalia on May 8, 1990. The hearing consumed approximately one hour and 45 minutes and entailed the brief testimony of three witnesses, two for General Counsel and one for Respondent. The parties stipulated to the admission of some 60 joint exhibits containing the history of the negotiations as reflected in proposals and correspondence relating thereto. On this record the ALJ rendered a recommended decision on September 17, 1990, in which he found that Respondent had bargained in bad faith as demonstrated by its predictably unacceptable proposals and refusal to discuss numerous mandatory topics of bargaining, its provision of unauthorized negotiators, and its refusal to provide in timely fashion the relevant information requested by the Union. The ALJ recommended the imposition of a makewhole remedy. Respondent timely filed exceptions and a brief in support.

The Board has considered the recommended decision of the ALJ and the record upon which it rests together with the exceptions and brief of Respondent, and has decided to affirm the rulings, findings, and conclusions of the ALJ to the extent consistent with its decision herein, and to remand this matter for further proceedings as explained below.

Discussion

Despite the strenuous efforts of the ALJ in this case, the Board is constrained to admit its frustration at the inadequacy of the record "developed" by the parties herein. For whatever reasons, the General Counsel, Respondent and Union decided to send this case to the ALJ on an exceedingly shallow transcript which fails, in any way, to elucidate the circumstances of the associated documentary submissions.[1/] While we cannot find as a matter of law that the General Counsel has failed to put forth a prima facie case which appears largely unrebutted, we do find that the General Counsel's case is so thinly presented as to tip the equities against deciding the case on so marginal a record.

In most of the issues vital to an adequate determination of the propriety or impropriety of Respondent's conduct, the record is manifestly inadequate. On the issue of Respondent's allegedly unacceptable proposals and failure to discuss mandatory bargaining subjects, ALJ Sobel was forced repeatedly to confess the

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[1/] In closing the hearing after the abrupt conclusion of General Counsel's case, Judge Sobel stated, "Pardon the tone of incredulity that has crept into my voice. Okay, I guess that's the end of the hearing." (R.T. at p. 34.)

near impossibility of rendering a satisfactorily grounded decision and the concomitant necessity of engaging in at best limited speculation. (See ALJ's recommended decision at p. 10, fn. 4, p. 14, fn. 5, p. 17, p. 19, p. 35, fn. 9, p. 37 and p. 38.) Similarly, the proof in the record addressed to the negotiating authority of Respondent's agents at the bargaining table is incomplete. (See ALJ Sobel's observations at id. at pp. 13, 40.)

Only on the question of the legality of Respondent's failure to provide the Union with relevant requested information in a timely fashion did the parties furnish an adequate record. The existing record demonstrates that Respondent unreasonably and without justification delayed for over a year in providing the Union with information contained in employee lists readily at its disposal. We find Respondent's exception to this finding of violation to be without merit.

Reluctantly the Board has concluded that this matter must be remanded for development of a more complete evidentiary record. It has discretion, of course, to order remand where the Board finds it appropriate to do so. (See, e.g., Jefferson Electric Co., a Division of Litton Systems, Inc. (1984) 271 NLRB 1089 [117 LRRM 1092], Wally Electrical Supply Co. (1984) 270 NLRB 1089 [116 LRRM 1217], Greater Boston YMCA (1979) 243 NLRB 447 [101 LRRM 15211.) At the reopened hearing, General Counsel shall present such additional evidence on the questions of negotiators' authority and discussion of mandatory bargaining subjects as it may have. The reasonableness of Respondent's proposals shall also be addressed. Respondent shall then have the opportunity to

introduce additional proof in rebuttal.[2/] The illegality, however, of Respondent's failure to timely provide the Union with requested information relevant to collective bargaining shall not be relitigated.[3/]

ORDER

It is hereby ordered that this proceeding be, and it hereby is, remanded to Administrative Law Judge Thomas Sobel, who shall take such action as is required in light of our decision herein so that the record is sufficient to decide the liability issues raised herein. It is further ordered that the Administrative Law Judge shall prepare and serve on the parties a supplemental decision containing credibility resolutions, findings of fact, conclusions of law, and a recommended order consistent with the remand. Following service of the supplemental decision on the parties, the provisions of Title 8, California Code of

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[2/]The Board does not wish to prescribe the presentation of further proof by either side. It is apparent, however, that testimony about the course of negotiations and proposals submitted by both sides, notes concerning bargaining sessions, and related matters would be appropriate for inclusion in the record.

[3/]Similarly, no additional evidence on the propriety of an award of the bargaining makewhole remedy under William Pal Porto & Sons, Inc. v. ALRB (1987) 191 Cal.App.3d 1195 [237 Cal.Rptr. 206] shall be received. In respect to this determination the record is not inadequate; Respondent had an opportunity to present such proof and completely failed to do so.

Regulations, section 20282 et seq. shall be applicable,

DATED: April 9, 1991

BRUCE J. JANIGIAN, Chairman[4/]

IVONNE RAMOS RICHARDSON, Member

JOSEPH C. SHELL, Member

[4/]The signatures of Board Members in all Board Decisions appear with the signature of the Chairperson first, if participating, followed by the signatures of the participating Board Members in order of their seniority. Member Nielsen did not participate.

MEMBER ELLIS, dissenting:

I do not believe that this case presents appropriate circumstances for remanding a matter for further hearing. Instead, it is my view that the Board should decide the merits of this case on the record now before it.

The record in this case consists of many exhibits but very little testimony. Consequently, the parties' actual conduct at the bargaining table is illuminated only dimly by the record. The result is that this case, even more so than other surface bargaining cases, is difficult to decide. However, that in itself is not a sufficient reason to remand the matter for further hearing.

As illustrated by the cases cited by the majority, the National Labor Relations Board (NLRB) has remanded cases to administrative law judges (ALJ) only in circumstances very different than those present here. Remand is appropriate where there has been an intervening change in the law which requires that the parties be afforded the opportunity to introduce evidence

to meet the new legal standard. (Wally Electrical Supply Co. (1984) 270 NLRB 1089 [16 LRRM 1217]. The NLRB has also remanded cases where it is unable to determine if it has the authority to proceed because the ALJ applied the wrong jurisdictional standards and the record reflects that the issues pertaining to the proper standards were not fully litigated. (Greater Boston YMCA (1979) 243 NLRB 447 [101 LRRM 1521][1/]; see also R & E Transit, St. Louis (1977) 229 NLRB 959 [95 LRRM 1199].) Remand is also appropriate where an ALJ erroneously disallows the introduction of relevant evidence. (Greenleaf Motor Express, Inc. (1990) 298 NLRB No. 26 [134 LRRM 1067]; The Connecticut Pen and Pencil Co., Inc. (1979) 242 NLRB 972 [101 LRRM 1299].)

In contrast to those cases where remand has been found to be appropriate, the Board here has not identified any erroneous and prejudicial evidentiary or other legal rulings that may have prevented the parties from fully litigating the case. Therefore, the parties were given a full opportunity to litigate all issues raised by this dispute. For whatever reasons, the parties both chose to make a sparse record. It is not the role of this Board to control or interfere with the trial strategy of either the General Counsel or the respondents in unfair labor practice proceedings.

In these circumstances, I believe that the Board must

[1/]In the third case cited by the majority, Jefferson Electric Co., a Division of Litton Systems, Inc. (1984) 271 NLRB 1089 [117 LRRM 1092], the NLRB merely sent the case back to the ALJ for further analysis consistent with its decision.

decide the matter on the record before it. Either the General Counsel succeeded in establishing a prima facie case or it failed to do so. If it succeeded, then the respondent either successfully rebutted the prima facie case or it did not. Both parties had a full opportunity to present their cases and now they must live with the consequences of their judgments in that regard. There is no reason for the Board to provide the parties with a second chance to meet their respective burdens of proof.

DATED: April 9, 1991

JIM ELLIS, Member

CASE SUMMARY

Robert Meyer dba Meyer Tomatoes (UFW)

Case No. 88-CE-3-VI
17 ALRB No. 5

BACKGROUND

This is a surface bargaining case. Charging Party United Farm Workers of America, AFL-CIO (UFW or Union) was certified by the Agricultural Labor Relations Board (ALRB or Board) as the exclusive bargaining representative of all the agricultural employees of Respondent Robert Meyer dba Meyer Tomatoes (Respondent) at Respondent's Monterey County, California operations in 1975. A collective bargaining agreement entered into between Respondent and the Union in September, 1985 was set to expire on October 15, 1987. Prior to the expiration of that agreement, however, the Board certified a second unit represented by the Union and composed of Respondent's agricultural employees at its Visalia, California operations on August 20, 1987. Over a year of negotiations produced no agreement on a contract for either unit. The Union filed unfair labor practice charges alleging failure to discuss mandatory bargaining topics, refusal to provide relevant information, making unreasonable proposals, and failing to meet regularly, to be available for meetings, and to provide adequately authorized negotiators.

ALJ DECISION

At a hearing held before Administrative Law Judge (ALJ) Thomas Sobel on May 8, 1990, in Visalia, California, the General Counsel put on two witnesses and Respondent put on one, while stipulating into evidence some 60 joint exhibits consisting of contractual offers and bargaining correspondence. On this record, the ALJ found that Respondent had failed to provide adequately authorized negotiators and to furnish relevant bargaining-related information, and had made unreasonable proposals and refused to discuss mandatory bargaining topics. The ALJ recommended a makewhole remedy.

BOARD DECISION

The Board found General Counsel's case to have been so thinly presented as to tip the equities against deciding the case on so marginal a record. Only on the issue of Respondent's failure to provide relevant bargaining-related information did the Board find the record sufficiently developed to avoid the necessity of remand. On the other issues the Board found remand necessary to develop a more complete evidentiary record. The Board therefore remanded the case to ALJ Sobel for further proceedings, and directed him upon completion of those proceedings to issue a supplemental decision. The Board directed that neither the finding of violation with respect to the Union's information request nor the propriety of a makewhole remedy be relitigated at the supplemental proceeding.

DISSENTING OPINION

Member Ellis would not remand this matter for further hearing because he believes it does not present appropriate circumstances for such action. Instead, he believes the Board should decide the case on the record now before it. Consistent with cited NLRB precedent, Member Ellis would remand only where the parties may have been prevented from fully litigating the issues in dispute by, for example, an intervening change in the law or an erroneous ruling by the ALJ. He would find that in this instance the parties had a full opportunity to litigate the case and should not be given another chance to meet their respective burdens of proof.

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This Case Summary is furnished for information only and is not the official statement of the case or of the ALRB.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: ROBERT MEYER, d/b/a MEYER TOMATOES, a sole proprietorship, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 88-CE-3-VI

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DECISION OF ADMINISTRATIVE LAW JUDGE

THOMAS SOBEL, Administrative Law Judge:

I.

INTRODUCTION

This case was heard by me in Visalia, California on May 8, 1990. On January 25, 1988 the United Farmworkers of America, AFL-CIO (UFW), the certified representative of all of Respondent Meyer Tomatoes agricultural employees (except those in the Salinas Valley), filed an unfair labor practice charge accusing Respondent of bargaining in bad faith. General Counsel issued a complaint on January 31, 1990 alleging that Respondent violated Labor Code section 1153(e) in a variety of ways, including refusing to discuss mandatory subjects; refusing to provide relevant information; making unreasonable proposals; failing to meet regularly (and to be available for meetings); and failing to invest its bargaining representatives with sufficient authority to negotiate. Respondent denies that it breached its bargaining obligation in any way.

II.

FACTS

On September 29, 1975 the UFW was certified as the exclusive collective bargaining representative of Respondent's agricultural employees in Monterey County (Salinas). On September 24, 1985 the parties executed a contract, the first Article of which reads:

> The Company does hereby recognize the Union as the labor organization representing all of the Company's agricultural employees (hereinafter called "workers") in the unit set forth in Agricultural Labor Relations

> Board's certification case number 75-RC-107-M. In the event the Agricultural Labor Relations Board certifies other employees not here included within the certified unit, such additional employees shall be included under the terms of this Agreement.
>
> Joint 3. (Emphasis Added)

This Article was "clarified" by a Supplemental Agreement which reads:

> In the event the ALRB makes a determination that a classification of workers are to be included in the certified unit of the Company, whether by clarification, amendment to certification or otherwise, the Company agrees to meet with the Union and [to] negotiate wages, hours, seniority, job descriptions and fringe benefits for such workers.

The "Salinas" contract was to expire on October 15, 1987.

On August 20, 1987 the Board certified the UFW as collective bargaining representative of all of Respondent's other agricultural employees (except those in the Salinas Valley) in the State of California.[1] There was apparently no contact between the parties until October 6, 1987 when, a little more than a week before the contract covering the Salinas unit was to expire, UFW negotiator Humberto Gomez wrote to Arnold Myers, Respondent's attorney, to demand that Respondent apply the terms and conditions of the Salinas contract to the employees in the Visalia unit pursuant to the Recognition article.

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[1]Because there is no evidence that the Respondent has employees outside the Visalia area under certification, and further, because the parties so frequently refer to the latter statewide unit as the "Visalia" unit, I will refer to it that way as well. In doing so, I am not making any finding about the scope of the unit different from that described by the certification.

Meyers replied on October 15, 1987:

> Your request is inappropriate and therefore must be denied. You are aware that California Labor Code section 1153(f) provides that it is an unfair labor practice for an employer to recognize, bargain with, or sign a collective bargaining agreement with any labor organization not certified. Therefore, Meyer Tomatoes can only recognize a union and bargain with that union where there is a certification.
>
> Here there are two certifications. One certification covers the Salinas Valley, the other certification covers the rest of the State. The collective bargaining agreement negotiated pursuant to Certification No. 75-RC-107-M covers only the Salinas Valley. Therefore, there is not authority or right to include any other employees outside the certification under the Salinas Valley agreement.
>
> Your request appears confused in light of the history of the 87-RC-2-VI certification. The Union petitioned for election and certification specifically omitting the Salinas Valley by the Union's own request. The Regional Director issued his report adopting the UFW position. Meyer Tomatoes objected. Subsequently, the Board ruled August 20, 1987 that "the unit will be all agricultural employees of the employer in the State of California except the Salinas Valley." Your letter of October 6, 1987 directly contradicted the UFW's own stated position.

Myers concluded by assuring Gomez that the company was ready to comply with its obligation to bargain in good faith with respect to the "Visalia" unit whenever the Union requested it. As Myers was writing his letter, Gomez was apparently writing him to request bargaining -- without distinguishing between the two units. Myers restated Respondent's position in his reply:

> We are in receipt of your letter of October 15, 1987 requesting a meeting regarding Meyer Tomatoes negotiations. However, from your letter, we were unable to determine which certification you intend to discuss with us, the Salinas certification or the Visalia certification. We have not as yet received a request for negotiations on the Visalia certification.
>
> Please let us know which unit you are requesting

negotiations for and suggest dates for each of them. We are ready and available to meet with your at reasonable times to negotiate each of these areas separately.

When Gomez wrote again to request a meeting "to discuss...a new contract", he explained:

> I also want to reinstate [sic] the Union position that the present contract for the Salinas Valley shall be applicable to the rest of the operations of Meyer Tomatoes in the State of California. As you are aware Article 1: Recognition states that if other properties are certified then those properties shall be covered by the contract.
>
> However, in the next meeting, I will responde (sic) to the Company proposal for the Salinas Valley, and I will present a Union proposal for the rest of the State.

He went on to propose various meeting dates.

Myers replied that it was not enough to offer separate proposals in one meeting:

> For reasons given in my correspondence to you dated October 15, 1987, it is unacceptable to attempt to combine two separate certifications and negotiations. Not only are there severe legal problems which we outlined in the letter of October 15, 1987, but there are practical problems which will delay the negotiating process. As you are certainly aware, there are differences in wages, benefits, working conditions and general problems regarding the two areas.
>
> * * *
>
> Meyer Tomatoes continues to be ready and willing to negotiate with you in good faith over both the Visalia and Salinas Valley certifications. We do not understand why you continue to delay the negotiating process with attempts to combine two separate certifications, particularly in light of the fact that the two separate certifications were at the UFW's own request. We feel these tactics on your part raise serious questions as to your sincerity in attempting to reach agreement on contracts in the Salinas Valley and to commence negotiations regarding the Visalia certification.
>
> As we have indicated before, we are prepared to

> negotiate both certifications at reasonable times. If you will communicate dates for each negotiation separately, we will be most happy to arrange for a mutually convenient time with you.

Gomez responded that it was Myers who appeared unwilling to meet since he (Gomez) had clearly indicated (1) that the Union would respond to the Company's Salinas proposal and (2) that he would offer a separate proposal for the Visalia unit which took into account differences between the two units; he continued to insist on a single meeting date to consider both proposals.

On November 11, Myers accused Gomez of being unreasonable in insisting on a single meeting for both units and again suggested two different dates. Gomez agreed to meet on one of the days suggested by Myers in order to discuss "the two certifications with Monterey...first and Visalia to follow." Meyers finally consented "to discuss both of the certifications on the same day," but not at the same time. (Jt. 13.)

The parties met on November 18, 1987. Myers, Mark Hafen (an associate of Myers), and Bob Minyard represented the company; Gomez, the Union. Gomez proposed that the terms and conditions of the "Salinas" contract apply to the Visalia certification with modifications in the following areas: (1) seniority (to accommodate area and seasonal needs); (2) holiday pay (to be 75% of daily average pay instead of daily average pay); (3) reductions in the contribution rates for the Robert F. Kennedy (medical) and Juan de La Cruz (pension) plans, and also in the combined Martin Luther King Farmworker Fund, and the Rene Lopez prepaid legal plan

rates; (4) deletion of Grower-Shipper language; (5) change from a full-time to a part-time union representative; and (6) local wage rates below the Salinas rates.[2]

Gomez testified that at this meeting he asked for a list of employees' "names, social security numbers, hire dates and job classifications for the "purpose of compiling a seniority list." (RT:16.) He amplified: "I explained that . . . since we were proposing a seniority article, and in order for us to come with *a* tangible seniority list, that was the reason we needed all that information." (TR:17.) He was told to put the request in writing. After the meeting, Hafen wrote to Gomez:

> It has been the usual practice that all requests for information be in writing. This avoids misunderstanding and confusion and expedites exchange of information. It has also been the procedure of the union to submit its requests for information in writing.
>
> Although you said you had not yet formulated the information request that you mentioned in the November 18, 1987 Visalia negotiating session, we are asking that, when you have formulated your request, you submit the information request in writing.
>
> (Jt. 15.)

Although Hafen's letter corroborates Gomez's testimony that the two men discussed information at the first meeting, Hafen''s statement that Gomez had "not yet formulated the information request" may mean that no specific information had

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[2]The wage proposal also purports to apply to Imperial Valley employees, but, as noted, the evidence indicates that Respondent has no operations in the Imperial Valley.

been requested. On the other hand, in light of Hafen's assertion about the Union's usual practice of putting its requests in writing, the statement about Gomez's not yet formulating the request may refer to nothing more than the Union' failure to make a written request. Because the letter is ambiguous, I will not take it as contradicting Gomez's testimony that he not only orally requested the types of employee information previously described, but that he also explained why he wanted them. Despite Respondent's failure to directly contradict Gomez's testimony about what he said at the meeting, a genuine dispute over what information Gomez requested is generated by the parties' subsequent correspondence. At this point, however, that dispute had not yet emerged.

The parties next met on January 15, 1988, at which time Respondent presented a complete proposal consisting of two pages and seven articles. Because of the brevity of the proposal, I reproduce it (exclusive of wage schedules) in its entirety:[3]

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[3]By way of comparison, the Union's initial proposal contained provisions on; Union Security, Hiring, Seniority, Grievance and Arbitration Procedure, No Strike Clause, Right of Access, Discipline and Discharge, Discrimination, Worker Security, Leaves of Absence, Maintenance of Standards, Supervisors, Health and Safety, Mechanization Management Rights, Union Label, New or Changed Operations, Hours of Work and Overtime, Reporting and Standby Time, Rest Periods, Vacations, Bereavement Pay, Holidays, Jury Duty and Witness Pay, Travel Pay, Records and Pay Periods, Income Tax Withholding, Credit Union Withholding, Medical Plan, Pension Plan, Farmworker and Prepaid Legal Plan Fund, Reporting and Deduction, Bulletin Boards, Family Housing, Subcontracting, Modification, Location of Company Operations, Successor Clause, Delinquencies, COLA, Union Representative, Injury on the Job, and Duration.

Article 1; Recognition

A. The Company does hereby recognize the Union as the sole labor organization representing all of the Company's agricultural employees (hereinafter called "workers") in the unit set forth in Agricultural Labor Relations Board's certification in case number 87-RC-2-VI. The term "worker" shall not include office and sales employees, security guards and supervisory employees who have the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other workers or the responsibility to direct them or adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

Article 2; No Strike Clause

A. There shall be no strikes, slowdowns, boycotts, interruptions of work by the Union, nor by the employees, nor shall there by any lockout by the Company,

Article 3; Discipline and Discharge

A. Company shall have the sole right to discipline and discharge workers for just cause.

Article 4: Discrimination

There shall be no discrimination against any worker because of race, age, creed, color, religion, sex, political belief, or national origin.

Article 5: Management Rights

The Company retains all rights of management including, but not limited to, the following: To decide the nature of equipment, machinery, methods or processes used, to introduce new equipment, machinery, methods or processes, and to change or discontinue existing equipment, machinery or processes? to determine the products to be produced, or the conduct of its business; to direct and supervise all of the employees, including the right to assign and transfer employees; to determine when overtime shall be worked and whether to require overtime.

Article 6; Subcontracting

The parties understand and agree that the hazards of agriculture are such that the Employer may

subcontract as it deems necessary in its sole judgment.

Article 7; Grower-Shipper Contracts

> It is recognized by Company and Union that various types of legal entities are used by growers and shippers in the agricultural industry, including partnership, joint venture, and other legal contractual arrangements, in the growing, packing, harvesting and selling of agricultural crops. Neither the Company nor the Union shall prevent the Company from entering into these legal arrangements by any of the provisions of this Agreement.
>
> (Jt. 17.)

So far as economics were concerned, Respondent offered no fringe benefits at all, and not only were its proposed wages generally lower than those proposed by the Union, Compare Jt. 14 with Joint 17, but also, in at least two of three job categories used by Respondent, its proposed first year wages were lower than the wages it was paying.[4]

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[4]It is difficult to make across-the-board comparisons between the Union's and Respondent's proposals and between Respondent's proposed wages and prevailing wages because the same job classifications are not consistently used by the parties. The difficulty in comparing Respondent's with the Union's wage proposals arises because the Union's wage proposal contains "Ranch Operations" and "Machine Harvest" categories which are not contained in Respondent's proposals. The difficulty in comparing Respondent's prevailing wages with its proposed wages arises from Respondent's indentifying only three "wage" levels in its response to the Union's request for information about "current" wages ("bucket piece rate," "transplanters" and "truck and tractor drivers", see Jt. 20,) and Respondent's utilizing six different "job" classifications in its initial proposal. To the extent that comparisons can be made between Respondent's proposed and prevailing rates, it appears that Respondent's initial piece-rate wage was lower than its prevailing piece rate ($.35 compared to $.37); its initial water sanitarian rate was lower than its prevailing rate ($5.20 compared to $5.35) and its proposed transplant rate was higher than its prevailing rate ($5.20 compared to $4.70.)

There was no further communication between the parties until February 22, 1988, when the Union requested the following information:

1. Seniority list containing names, addresses, Social Security number and job classification;
2. Wages by classification (1987)
   A. Piece Rate B. Hourly
3. Names and addresses of Labor Contractors involved during the pre-harvest [and] harvest for 1986-87.
4. Copies of contracts between Meyer Tomatoes and Labor Contractors including commission paid by Meyer Tomatoes to Labor Contractors.
5. Number of acres Planted-Harvested in 1987.
   A. Spring season
   B. Fall season
6. Number of buckets harvested per acre for the above seasons.
7. Overtime pay (if any)
8. Holiday and Vacation Pay (if any)
9. Undeleted copies of Grower-Producer contracts between Meyer Tomatoes and the Growers.
10. Number of acres to be planted for the 198-8 season
    A. Spring season
    B. Fall season

Hafen responded on March 22, 1988. Saying nothing at all about grower-shipper contracts, he told Gomez that Respondent provided no overtime, holiday and vacation pay; that it planted about 1700 acres in both spring and fall 1987; that it intended to plant about 1600 acres in 1988; that it had no written contracts with labor contractors and that it paid them a straight $47.00 per ton. He further provided Respondent's piece rates for pickers and hourly rates for truckers and transplanters. With respect, to the request for a "seniority list containing" the names, addresses, Social Security numbers and job classifications of employees, he simply told Gomez that Respondent kept no seniority list. He did

not represent that Respondent kept none of the kinds of information requested and, in fact, Board agent Ed Perez testified that, within 24 hours of the filing of the Petition for Certification, Respondent had provided a list of employees which contained addresses and Social Security numbers. It is clear, then, that at least with respect to the employees employed during the pre-petition period, Respondent had, or could easily obtain, the addresses and Social Security numbers of its employees.

There was no further contact between the parties until April 26 when Gomez sent another information request for:

1. The number of acres planted in the Imperial Valley in 1988;
2. The number of acres in the Arvin-Lamont area (Kern) in in 1988;
3. Seniority list including names, addresses and social security (numbers) of workers in both areas;
4. Seniority list including names, addresses and social security numbers of workers in both Imperial and Lamont-Arvin.
5. Seniority List for Kettleman City-Huron area by name and classification;
6. Wages paid to labor contractor crews for planting and harvesting in Imperial and Arvin-Lamont, and Kettleman City, Huron area including the price per bucket and any commissions for tonnage, hours or acreage.

Hafen replied, saying that the company was reviewing the requests and would "[be] responding to them within a reasonable period of time." A few days later, the parties agreed to meet on May 10 to discuss the Salinas certification, and again on May 13 to discuss the Visalia certification.

When the parties met, Hafen and Scott Wharton were representing the Company; Myers was not present. Before relating

what happened at this meeting and, at the risk of interrupting the narrative, I will describe the evidence concerning the authority of Respondent's negotiators. I take the matter up at this point because the testimony which relates to the "authority" issue primarily focuses on the relation between Wharton and Hafen, and it is at this meeting that Wharton first appears. I wish to emphasize that General Counsel presented no evidence about anything Wharton or Hafen said or did during any particular meeting, including the May 13th meeting itself; rather, as will be clear from what follows, Gomez simply characterized the role played by the two men generally.

According to Gomez, Wharton would not participate in negotiations so that whenever Gomez asked him something, Wharton would refer him to Hafen. Wharton, however, testified that he did answer questions if they were "operationally oriented"; to the extent he "felt [the question touched upon] a legal issue, . . . [he] would ask for Mark Hafen." (RT:28.) Wharton went on to describe his authority this way: "There were certain things [Meyer's owner, Bob Meyer, and I] would talk about prior to each [meeting] and I was given latitude [to negotiate] within—within the realms that we were talking about..." (RT:25.) After each meeting, he sat down again with Meyer to obtain authority with respect to what had just been discussed. This description of his authority is consistent with what he told Gomez for Gomez testified that Hafen said he could only discuss "previous" proposals, and that he could not "discuss any new proposals" Gomez might present. (RT:14.)

To conclude the subject of negotiating practices, I will add that, according to Gomez, Respondent's negotiators (1) Typically arrived late for meetings, (2) that the longest session was two hours long, (3) that some were only one hour long, (4) and that one session, cut short by Wharton's having to leave, was only 15 minutes long. Wharton did not testify about the length of meetings generally, but he did confirm that there was one short meeting, perhaps 20 minutes long, and that he advised the Union before the meeting began that he would have to leave early. (RT:27.)

To return to the May 13th meeting: Gomez resubmitted the Union's November 1987 proposal with modifications, such as a further reduction in the pension plan contribution rate; unconditional provision for prepaid legal services (the Salinas contract provided for such a plan only if a certain number of other employers also agreed to it); elimination of any union representative, and modification of some wage demands.[5] The Company offered nothing new.

About a week after the meeting, Hafen wrote Gomez essentially chiding him for having requested further information.

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[5]Specifically, the Union went down on the first and second year picker rates, and the second year machine operator and trailer puller rates, Compare Jt. 25 with Jt. 14 (I am ignoring the handwritten figures on Jt. 14, which I suspect are company rates, since the handwritten rates are inconsistent with the Union's later proposals, but consistent with the company's proposals.)

> The Visalia Certification was issued on August 20, 1987. The Union's first request for negotiations was in a letter dated October 15, 1987. The Union did not request any information until February 22, 1988, which was a request for extensive information in a letter dated March 22, 1988. A copy of our response is attached hereto.
>
> In a letter dated April 16, 1988, you expanded your information requests. We fail to understand why these requests were not made at the same time as the first requests. We are not aware of any developments that have occurred since your initial request which would explain your need to make the requests on April 16, instead of at the time of your initial request. We are sure you understand compiling responses to information is time consuming. We do not disagree with your right to obtain relevant information for bargaining purposes; however, we request you make complete requests as early in the negotiations as reasonably possible. Naturally, should new developments occur which require additional information, we can understand the need for additional requests. Meyer Tomato will provide relevant responses to your requests within a reasonable time.

When the parties met again on May 27, Hafen hand-delivered the Company's written response to the information request in which he told Gomez the company was not farming any Imperial or Kern County acreage in 1988, and that it had no additional information to provide concerning labor contractor fees. With respect to the employee information requested by Gomez, he wrote:

> In regard to request number five which is a request for a seniority list, we told you in our earlier response to your first information request dated March 22, 1988 and at the last negotiation session that Meyer Tomato does not maintain any seniority list for employees in the San Joaquin Valley since Meyer Tomato uses labor contractors. However, you did clarify your request and ask for a list of employees by name and classification. Attached you will find a list of names of employees who have been employed by the labor contractor during the season at various times as per your request.

The parties stipulated that Hafen submitted a 34-page alphabetized list of the names and coded job classifications of 1860 employees

employed through labor contractor Rios Farm Labor Service. Gomez contended that the list was not responsive to the Union's request in that it only listed employees supplied by one labor contractor, when Respondent used two, and even as to these employees, the list was incomplete because it did not have addresses, social security numbers and hire dates.

At the meeting, the Company re-presented its January proposal along with a written explanation about why it would not extend the Monterey contract to the San Joaquin Valley:

> Meyer Tomato, in the Salinas Valley, has an established contract that has been negotiated over a long period of time in which there has (sic) been various benefits and wages negotiated. Many of these wages and benefits have been negotiated in light of the fact that Meyer Tomato has been able to stay competitive with other tomato growers in the Salinas Valley. As you know, recently, for various reasons, including the cost of labor, growers have decided to harvest their own fruit. This stems from the fact that the growers can harvest the tomatoes at a substantial savings per acre.
>
> If this contract were applied to the Visalia area or to the rest of the State of California, it would immediately put Meyer Tomato in a non-competitive position. This would not be beneficial for the Union nor would there be any benefit to Meyer Tomato. Meyer Tomato believes it is offering a package that is competitive with the prevailing wages of tomato harvesting in San Joaquin Valley. Therefore, we reject you proposal in proposing the terms and conditions of the current agreement to the Visalia Certification.

In his testimony, Wharton emphasized that because Respondent did not have an office or administrative personnel in Visalia, it depended on labor contractors, even relying on them to supply the

buckets for harvesting. (RT:25-6; 29-30.)[6] Respondent also specifically rejected the Union's proposal on seniority:

> We would also like to address what you have proposed as a modification to Article 4; Seniority. You have proposed that there be area and season seniority for the fall and summer. Meyer Tomato does not maintain any seniority list for employees. Meyer Tomato uses labor contractors that do not use a seniority list to call employees back to work. The labor contractor does have an employee list in [sic] which the labor contractor may or may not use in obtaining a work force. Many of the employees work again for the labor contractor. However, it is not based on seniority, but merely because the employees are available for work. Therefore, we cannot accept your proposal in relation to seniority.

Finally, the Company modified its wage proposal, going up in most categories, Compare No. 17 with Jt. 29. Although there is no testimony about what the parties discussed, a subsequent letter from Hafen to Gomez indicates that the parties talked about the requests for information. He wrote:

> At the May 27th negotiating session, you again expanded your requests from the requests mentioned in your April 26, 1988 letter. For example, we provided you with a copy of the expired lease agreement of the Meyer Home Ranch. Your rationale for the copy of this lease is that you wanted to be able to show the members of the Union that in fact the lease had expired. As a courtesy to you, we did not demand that your rationale for that information request be in writing, but instead provided you that information based on your oral requests. We provided you with page 1, which established the parties; page 2, which showed the Term of the Agreement, and the signature page of the lease. You have now expanded your request to include the entire lease agreement with

[6]Respondent did have field supervisors in Visalia and supplied whatever equipment was used in transplanting. From the absence of any reference to the contractor's providing the various sorts of trucks and trailers identified in the wage proposals, I conclude that Respondent provided these.

> Meyer Tomato. We do not understand the rationale for you requesting the entire lease agreement when we have provided you with the relevant information in the lease agreement to satisfy your information request. Therefore, we are asking that you provide us with a written rationale as to why you need the entire lease agreement of the Meyer Tomato Home Ranch.
>
> Also, you asked us at the last negotiating session, for the amount of acres that each grower grows for Meyer Tomato. We do not see the relevance for this request in light of the fact that we have provided you with a total amount of acres that Meyer Tomato plans on harvesting for the 1988 season. Therefore, we are asking that you provide us with a written rationale of why you need the amount of acres that each rancher plans on growing for Meyer Tomato.

Hafen concluded by charging Gomez with bad faith by the latter's precipitous rejection of the Company's proposal: "We do not believe that you have made a good faith attempt to review our proposal and . . . we hope you will reconsider our proposal and respond to it . . . ." (Jt. 30.)

On June 10, Gomez proposed meeting on various dates. Hafen responded that Gomez's suggested dates were not suitable. When the dates Hafen proposed proved unacceptable to Gomez, Gomez promised to provide other dates. When he failed to do so, Hafen suggested meeting on July 15, 1988. Gomez suggested July 28th or 29th.

When the parties met, the Union proposed a lower pension plan contribution rate, came down a cent in most of the hand harvest classifications, but stood firm on wanting the Monterey agreement as previously modified. On August 16, the parties met again and Respondent re-presented most of its original proposal,

except that it modified some its hand harvest rates (going up $.002 in the first and second year picker wages, and up $.25 in the first year checker, trailer puller, and "first five" dumper rates.) The company also proposed a Safety article in which it agreed to follow applicable federal and state safety regulations. Again no details of their discussions were provided.

The parties met again on September 13, 1988. The Union reduced the number of paid holidays it was seeking, deleted the travel pay provision, and purportedly made changes in the prepaid medical plan proposal which I cannot describe because the changes are not attached to the exhibit containing the proposal. It also came down on wages in a number of job categories.

On October 11, Wharton notified the Union of the company's intention to introduce machines on an experimental basis within a few days. Wharton purported to be notifying Gomez of the introduction of machines merely "as a courtesy" and offered to bargain over any possible raise in wages for the machine crew, but not over the decision to introduce the machines, even though he conceded that some jobs would probably be lost: "Because of the nature of this machine, we expect a reduction or elimination of the need for dumpers and possibly checkers. However, we expect there may be an increase in the total crew. Should you wish to negotiate the wages for these classifications, we are naturally prepared to meet with you for this purpose." (Jt. 43.)

On October 13, the day the machines were to be introduced, Gomez wrote to request "effects" bargaining in

connection with which he requested information about (1) the number of machines to be introduced, (2) the number of workers required by each machine, (3) the locations they would be used; (4) the number of crews to continue on piece rate; and (5) the names of companies used by Meyer to set the standard for the machine rates. He again requested "the Visalia Certification Seniority List" including names, social security number, addresses and classifications of each employee and, for the first time in writing, he also requested hire dates. (Jt. 45.)

On October 21, Gomez proposed meeting in the last week of October. The same day Hafen responded to the information requests. He again contended that there was no Visalia seniority list because Meyer hires only through labor contractors, and reminded Gomez that Respondent had previously supplied the names and classifications of the employees it used pursuant to the Union's May 27 oral clarification of its request. He said nothing about dates of hire. Finally, he answered Gomez"s questions about the number of machines, the number of workers per machine, the location of the machines, and how the rates had been set.

The parties next met on November 2. The Company modified its No-Strike article to incorporate the Union's proposed language; adopted the Union's provision on access for the purpose of administering the agreement; proposed the right to unilaterally change operations or classifications subject only to the requirement that it notify the Union; added Modification and

Duration articles similar to those proposed by the Union; and (1) increased the transplanting rates for the first year of the contract, (2) the picking rates for the first two years of the contract, and (3) most of the other hand-harvest rates.

The parties met again on November 7th at which time Gomez submitted a complete proposal which modified the Union's proposal in a number of ways: wages were increased in all classifications; the hiring hall was abandoned in favor of a "centralized hiring facility operated by the company"; the mechanization article, which had previously provided that the company could use harvesting machines so long as workers possessing certain seniority would not be displaced, now provided that the company could introduce machinery provided only that it gave notice and bargained over effects; the number of hours necessary to qualify for overtime and for vacation was increased for some workers; the number of paid holidays was reduced; the prepaid legal services plan was eliminated; the contribution rate for the pension plan was changed; employer delinquencies were deleted as exceptions to the No-Strike pledge; and injury-on-the-job liability was reduced.

On November 8, Hafen wrote to Gomez asserting that his request for the names, social security number and dates of hire was designed to stall negotiations:

> The Visalia Certification was issued on August 20, 1987. The Union did not make a request to bargain. Meyer Tomatoes offered on October 15, 1987 to meet with the Union to negotiate. The parties met and began negotiations on November 18, 1987. The Union did not request any information until February 22, 1988, at

> which time the Union requested extensive information concerning Meyer Tomatoes operations. The employer provided you complete relevant information in a letter dated March 22, 1988.
>
> In the March 22, 1988 letter, we again informed you as we had for several months that Meyer Tomatoes maintained no seniority list for employees in the Visalia area. In a letter dated April 26, 1988, you again asked for a seniority list of workers for the Visalia Certification. After further explanation to you, you revised your request and asked for an employee list of the Visalia area including the name and classifications of employees hired by labor contractors in the Visalia area. The employer provided you this information on May 27, 1988 at the Visalia negotiating session. It was our understanding that we had provided you with all the information that you had requested.
>
> On November 2, 1988, six months after the Employer provided you complete information and 15 months after the Certification was issued, you have expanded your request and asked for additional information concerning the employee list. Your reason was so you "could put together a proposal on seniority." We fail to understand your waiting 15 months after the Certification and 12 months after you were informed there was no seniority system to request information to make a proposal. Although the Employer will comply with your request to the extent feasible, you should understand that compiling this information is a lengthy process. We believe that this request at this late date and your failure to develop a seniority proposal after one year's negotiations, if that is your intent, is a dilatory tactic on your part to stall the negotiating process. Meyer Tomatoes will provide the relevant response to you within a reasonable time.

Gomez replied on November 10, explaining that the Union had always wanted the requested information in order to put together a seniority article or recall list. He maintained that the request was not new because he had repeatedly requested "such list" on November 18, February 22, and April 26. Finally, he disputed Hafen's accusation that the Union was merely stalling:

> Your assumption that the Union is using the request for information as a dilatory tactic is also incorrect. As you are aware there is no way for the Union to put together a seniority proposal and recall list if we don't have the information that we have been requesting since November 18, 1987, and that up to this day the Company has refused to provide.

Hafen replied:

> 1. We have told you repeatedly from the beginning of the negotiations, Meyer Tomatoes does not have a seniority list for the Visalia Certification since Meyer Tomatoes uses labor contractors to supply labor. In both your February 22 and your April 26, 1988 letters, you requested a seniority list for the Visalia area. After the April 26th letter and after further explanation to you, you changed your request and requested an employee list, listing the employees by name and classification. We provided you with this information at the May 27, 1988 negotiating session. The information that you are now requesting is an employee list including the employees names, dates of hire, addresses, social security number, and the season the employee worked. This is a request for information in addition to what Meyer Tomatoes has already provided you.
>
> * * *
>
> Initially, you stated to us that your rationale for needing the employee list was because you needed to know the number of employees working for Meyer Tomatoes in the Visalia area in order to determine the number of employees to ratify the contract once it is agreed upon. You have now changed your rationale and told us that the reason for wanting the new information is to develop a seniority list for the employees of the area. We can only assume from the delay in asking for the information, as well as the change in rationale, that your actions are a tactic to further stall the negotiating process. However, as we have explained to you, Meyer Tomatoes will respond to your request as soon as it is reasonably possible to assemble relevant information.

At the next meeting held on November 23, 1988, the Company re-proposed its November 2nd proposal. Several weeks later, Hafen suggested meeting in January. By the time the

parties met, Ben Maddock had replaced Gomez and Respondent had modified its previous proposal to include provisions for a grievance procedure, for rest periods, and, finally, bulletin boards for union business. The proposed grievance procedure provided that the decision of the Company on all grievances would be final. Although this was to be the parties' last meeting, it was not the last act covered by the record: in May 1989, Respondent forwarded to the Union employee lists from two labor contractors, Rios Farm Labor Services and Morales Custom Harvesting. The parties stipulated that the list of Rios-supplied employees contained job classifications, hire dates, and some social security numbers but no addresses. The list of Morales-supplied employees contained Social Security numbers and classifications.

II

ANALYSIS

Based upon the foregoing facts, General Counsel contends that Respondent was engaged in surface bargaining, that it was "merely going through the required motions" without any intention of entering into a collective bargaining agreement. For its part, Respondent contends that it engaged in hard bargaining and that what separated the parties was the irreconcilability of, on the one hand, the Union's intention to apply the "Salinas" agreement to the Visalia unit and, and on the other hand, Respondent's intention to negotiate an agreement responsive to local

conditions. The difficulty in this case is that of determining Respondent's state of mind solely from its conduct. To accomplish this, General Counsel focuses on certain elements of Respondent's conduct which are said to be inconsistent with that obligation to make a serious effort "to resolve differences and to reach a common ground" with the Union which is the hallmark of good-faith bargaining. NLRB v. Insurance Agents Int'l Union (1960) 368 U.S. 477, 485.

1.

The first element isolated by General Counsel is Respondent's refusal to include the Visalia employees under the terms of the existing collective bargaining agreement. The basis for General Counsel's contention in this regard is the NLRB's so-called "after-acquired stores" doctrine, under which the parties to a collective bargaining agreement can agree to extend its terms and conditions to additional employees. If this doctrine is applicable precedent under the ALRA, there is no question that Respondent was guilty of a per se refusal to bargain since Respondent makes a virtue of its opposition to the Union's effort to apply the Salinas contract to the Visalia unit. However, before considering the question of the applicability of "after acquired stores" doctrine, I must initially determine whether the clause is an after acquired stores clause.

A typical "after-acquired stores" clause requires a contracting employer (1) to recognized a labor union as the

representative of its employees in a later acquired unit and (2) to apply the parties' collective bargaining agreement to such "additional" employees. Since I cannot read the Recognition Article, as clarified by the Supplemental Agreement as requiring either of those events, I cannot take it as an "after-acquired stores" clause. Indeed, the Supplemental Agreement makes it clear that the employer is only obligated to negotiate with the union whenever the Board adds employees to the unit; thus, it requires nothing that is not required by the certification itself. Even if the Recognition Article be considered in "after-acquired stores" clause, I have reservations about the validity of such a clause under the circumstances of this case, although not for the reasons advanced by Respondent. In order to explain these reservations, however, I must go into greater detail concerning the nature and history of such clauses under the NLRA. I have already stated that such clauses require an employer to apply its contract with a signatory union to employees in a presumptively appropriate separate unit. The difference between bargaining obligations arising under such clauses, and bargaining obligations arising under Board procedures, such as amendment of certification or accretion doctrine, is that the obligation which arises pursuant to an "after-acquired stores" clause is considered a creature of contract. Indeed, it was this feature which caused the national Board to reject such clauses on them grounds that extension of a collective bargaining agreement to cover employees

who may constitute an appropriate unit by themselves violated those employees' right to choose their own collective bargaining representative. Melbet Jewelry (1968) 180 NLRB 108.

Although the Board was to relax its rule to the extent of upholding "additional stores" clauses when it was satisfied that the affected employees were not denied their right to have a say in the selection of their bargaining representative, See Frazier's Market (1972) 197 NLRB 1156, White Front Stores (1971) 192 NLRB 240, it continued to hold them illegal where they subjected the members of a "presumptively appropriate [separate] unit to a collective bargaining agreement," absent any proof of majority support. The Kroger Co. (1974) 208 NLRB 928 rev'd and rem'd sub nom. Retail Clerks Intern'1. Ass'n. LOG. No. 455 v. NLRB (DC Cir. 1975) 510 F.2d 802. Upon being rebuffed by the Court of Appeals, the Board reconsidered the rationale of its Kroger rule and, declared "additional stores" clauses valid where a union could prove that it had majority support:

> The facts are not in dispute. Respondent has separate collective-bargaining agreements with Retail Clerks Local 455 and Meat Cutters Local 408. In each of these collective-bargaining agreements, Respondent has agreed to recognize the Union as the exclusive bargaining representative of employees in designated classifications at all stores operated by Respondent's Houston Division in the State of Texas.
>
> * * *
>
> The instant controversy had its beginning in March 1972, when Kroger Co. decided, for administrative purposes, to shift its stores at Nacogdoches and Lufkin, Texas, from its Dallas to its Houston Division. The Unions took the position that they were entitled to recognition as the bargaining representatives of these employees under the terms of their collective-bargaining agreements with

Respondent.

* * *

It is undisputed that, at the time the recognition requests were made, the Unions possessed valid card majorities among the employees sought.

We begin our reconsideration of this case by stating again our acknowledgment, recognized by the court, that the principles of accretion do not resolve the issue presented in this case, inasmuch as the stores in question have a sufficient separate existence to constitute separate appropriate units. We also acknowledge that the Board has held that "additional store clauses" are valid in situations where the Board is satisfied that the employees affected are not denied their right to have a say in the selection of their bargaining representative.

Interpreting these clauses to mean that an employer can voluntarily recognize a union or demand an election renders them totally meaningless and without effect, for unions need no contract authorization to establish their representation status in a Board conducted election. However, these clauses can be read to require recognition upon proof of majority status by a union. As stated above, there is no need to hold these clauses totally invalid simply because they do not contain an explicit condition that unions must represent a majority of the employees in a new store, inasmuch as the Board will impose such a condition as a matter of law. It is evident that under the circumstances present in this case, the Unions have lived up to the requirements imposed by the Board and therefore the agreements between them and the Employer should be enforced.

* * *

The court examined these clauses in the context of this case and found that they constituted a waiver by Kroger of its right to demand an election in these circumstances. Upon reconsideration we now adopt this view as the only reasonable interpretation which save these clauses from meaninglessness or from impinging on functions reserved solely to the Board.

* * *

As we have interpreted them these clauses are

> contractual commitments by the Employer to forgo its right to resort to the use of the Board's election process in determining the Unions' representation status in these new stores. To permit the Employer to claim the very right which it has forgone, perhaps in return for concessions in other area, would violated the basic national labor policy requiring the Board to respect the integrity of collective-bargaining agreements. Since the Unions' majority is conceded by all concerned, there is no countervailing considerations of policy not to give effect to these agreements. The fact that the literal language of the agreements themselves can be read as going beyond what the Board would permit, in determining by contract that an accretion had occurred when in fact the contract cannot resolve this issue, provides little reason for invalidating the entire agreement when it, plus the conduct of the Unions, can reasonably be read as we have read it. The Board has held that an employer may agree in advance of a card count to recognize a union on the basis of a card majority, and we can perceive of no reason why it may not contract with the union to do so in advance of the time the union has commenced organization.
>
> Houston Div of the Kroger Co. (1975) 219 NLRB 388

Since Kroger Co., the Board has recognized the validity of "additional store clauses" and has required employer-signatories to contracts containing them to recognize the union as the representative of the "additional" employees and to apply the terms of collective bargaining agreements to such employees, provided only that the union present the Board with card evidence that it has majority support, see, e.g., Joseph Magnin Company, Inc. 294 NLRB No. 13. And an employer's failure to recognize a

union under such circumstances is a per se refusal to bargain.[7]

As I have noted, Respondent resisted applying the Salinas contract to the Visalia employees on the grounds that Labor Code section 1153(f), which provides that it is an unfair labor practice for an employer to bargain with an uncertified union, prevented application of the agreement. I reject this argument. In the first place, such a result is not literally required by our statute since the clause in question was the product of bargaining with a certified union. Indeed, to treat 1153(f) as a bar to application of "after-acquired stores" doctrine would be to place a substantial gloss on the language of the section so that it would not only prohibit bargaining with an uncertified union, but would also restrict the scope of bargaining between an employer and a certified union. By analogy to the reasoning of both the court of appeals and the national Board in the Kroger case, it

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[7]General Counsel does not argue that Respondent's refusal to apply the Salinas agreement is a per se refusal to bargain, but only that "Respondent's failure to properly evaluate the validity of the clause...manifests lack of proper diligence...." Post-Hearing Brief pp. 31-32. I am not exactly sure what she means by this since Respondent did argue that Section 1153(f) prohibited application of the Salinas contract to the Visalia unit. Thus, to the extent General Counsel's argument about Respondent's failure to "evaluate the validity of the clause" means anything other than Respondent was wrong about the applicability of "after-acquired stores" doctrine under the ALRA, I reject her argument. Respondent has either committed a per se refusal to bargain or it has not, and if it has not, I will not treat its position on the question of the applicability of the Salinas contract as evidence of bad faith.

would not distort the meaning of Section 1153(f) to treat an after-acquired stores clause in a collective bargaining agreement between an employer and a certified union as valid only upon the later certification of the union as collective bargaining representative of the employees in another presumptively appropriate unit.

If the 1153(f) argument became irrelevant once the Union was certified as representative of the Visalia unit, another statutory difficulty does present itself for by conducting separate elections, the Regional Director determined that the Visalia unit and the Salinas unit ought to be separate. If the effect of an after-acquired store clause is creation *of* single unit out of the existing unit and the after-acquired unit, then it follows that such a clause can be honored under the ALRA only if a statewide unit be appropriate. In fact, a typical "after-acquired stores" clause under the NLRA is treated as "folding" new employees into an already existing unit. Thus, the clause in Alpha-Beta Company (1989) 294 NLRB No. 13 reads:

> [the Union is the exclusive collective bargaining representative for] an appropriate unit consisting of all employees working in the Employer's retail food stores.. . . "

and

the clause in Woods Chapel United Super (1988) 289 NLRB No. 20 reads:

> The Employer hereby recognizes the Union as the exclusive collective bargaining agent with respect to rates of pay, hours, and all other terms and conditions of employment for the appropriate bargaining unit established and described as follows: All employees employed by the Employer working in the Employer's

present and future retail establishments....

This "folding-in" means that such clauses can be valid under our Act only where a "unit composed of the employees of an employer's store covered by the collective bargaining agreement and the new store employees [is] appropriate for the purpose of collective bargaining...." 289 NLRB No. 20, ALJD, p. 34. (Emphasis added) And where a unit created by such an agreement does not coincide with Board unit policy, the agreement is unenforceable. See Houston Division of the Kroger Co., (1975) 219 NLRB 388, fn. 6.

In this case, there is no evidence from which to conclude, contrary to the Regional Director's unit determination, that a single statewide unit, is appropriate.[8] Therefore, whatever validity an "after-acquired store clause" might have in a case in which the unit question could be resolved in favor of a statewide unit, I cannot treat the clause in this case as folding the Visalia employees into a unit in a different geographic area. Accordingly, Respondent committed no unfair labor practice in rejecting the Union's demand.

2.

The next element of conduct which General Counsel points to as indicative of Respondent's bad faith are its proposals, and

[8]While single units are "presumptively" appropriate under our Act, Prohoroff Poultry Farms (1983) 9 ALRB No. 6, I believe the Regional Director's contrary determination in this case dissipates the initial force of the presumption.

General Counsel make two separate arguments in connection with these: (1) that they are predictably unacceptable and (2) that, in making them, Respondent refused to discuss mandatory subjects. Before discussing the nature of Respondent's proposals, let me briefly discuss the authority for my even considering the content of proposals in assessing bad faith.

Labor Code section 1155.2 expressly declares that the obligation to bargain in good faith "does not compel [an employer] to agree to a proposal or require the making of a concession." Although it might be thought that this language prevents the Board from taking into account the reasonableness of a party's proposals, in fact it does not. To the contrary, it is emphasized that "if the board is not to be blinded by empty talk and by mere surface motions of collective bargaining, it must take some cognizance of the reasonableness of the positions taken by the employer in the course of negotiations" NLRB v. Reed & Prince Mfg. Co. (1st Cir. 1953) 205 F.2d 131, 134. And this is "especially [the case when] the parties are sophisticated [since] the only indicia of bad faith may be the proposals advanced and adhered to...." NLRB v. Wright Motors Inc. (7th Cir. 1979) 603 F.2d 604, 609. That this is the position of the NLRB is clear from its decision in Reichhold Chemical (1988) 288 NLRB No. 8:

> The Board's original decision in this case found that the judge improperly based his finding of unlawful surface bargaining on the Respondent's insistence on a broad management rights clause, a narrow grievance definition, and a comprehensive no-strike provision which included a waiver of access to board processes. The Board held that the Respondent's adherence to these three proposals was not evidence of an intent to

frustrate the collective-bargaining process. In reversing the judge, the Board stated that '[t]he Board will not attempt to evaluate the reasonableness of a party's bargaining proposals, as distinguished from bargaining tactics, in determining whether the party has bargained in good faith."

On further reflection, we conclude that this statement is an imprecise description of the process the Board undertakes in evaluating whether a party has engaged in good-faith bargaining. Specifically, the quoted sentence could lead to the misconception that under no circumstances will the Board consider the content of a party's proposals in assessing the totality of its conduct during negotiations. On the contrary, we wish to emphasize that in some cases specific proposals might become relevant in determining whether a party has bargained in bad faith. The Board's earlier decision in this case is not to be construed as suggesting that this Board has precluded itself from reading the language of contract proposals and examining insistence on extreme proposals in certain situations.

That we will read proposals does not mean, however, that we will decide that particular proposals are either 'acceptable' or 'unacceptable' to a party. Instead, relying on the Board's cumulative institutional experience in administering the Act, we shall continue to examine proposals when appropriate and consider whether, on the basis of objective factors, a demand is clearly designed to frustrate agreement on a collective-bargaining contract. The Board's task in cases alleging bad-faith bargaining is the often difficult one of determining a party's intent from the aggregate of its conduct. In performing this task we will strive to avoid making purely subjective judgments concerning the substance of proposals.

Each party to collective bargaining 'has an enforceable right to good faith bargaining on the part of the other.' Enforcement of that right is one of the board's most important responsibilities. Indeed, the fundamental rights guaranteed employees by the Act--to act in concert, to organize, and to freely choose a bargaining agent--are meaningless if their employer can make a mockery of the duty to bargain by adhering to proposals which clearly demonstrate an intent not to reach an agreement with the employees' selected collective-bargaining representative. The Board will not have fulfilled its obligation to look at the whole picture of a party's conduct in negotiations if we have

> ignored what is often the central aspect of bargaining, i.e., the proposals advanced by the parties.
>
> Id., at pp. 2-5.

In the cases following Reichhold, the Board has repeatedly analyzed proposals in order to assess good faith, see e.g., Marina Associates d/b/a Harrah's Marina Hotel and Casino (1989) 296 NLRB No. 147, 55-59; Overnite Transportation Company (1989) 296 NLRB No. 77; Virginia Holding Corporation (1989) 293 NLRB No. 16. With the relevance of such an inquiry established, I turn to consider the proposals themselves. In doing so, I am guided by one standard: Were Respondent's proposals so inconsistent with its collective bargaining obligation as to evince a design to frustrate agreement?

Respondent's first offer consisted of only seven articles exclusive of wages.[9] Since the Recognition article does nothing more than commit Respondent to do what it is obligated to do under the Board's certification, and the Discrimination article does little more than commit Respondent to do what it is (probably) obligated to do under state or federal laws, Respondent's

[9]In considering the content of Respondent's proposals, I take no account of General Counsel's argument that I also consider Respondent's wage proposals as "patently unacceptable" because they contained no fringe benefits and only a "negligible" increase in one job category. Unlike the proposals discussed above, which appear to me to reflect the Respondent's attitude toward the collective bargaining process itself, consideration of the reasonableness of wage offers requires me to know more about Respondent's financial condition or the wage structure of the market in which Respondent operated than I know.

proposals remitted only five subjects to the collective bargaining process. Moreover, as emphasized by General Counsel, each of Respondent's proposals on these subjects aims at Respondent's retaining authority and control over the terms and conditions of employment. Thus, the company retained the "sole" right to discipline and discharge workers; "all rights of management"; the capacity to "subcontract as it deemted] necessary in its sole judgment", and to enter into any and all grower-shipper contracts. Proposals such as these, under which an employer retains unilateral control over virtually all significant terms and conditions of employment covered by the contract, have been held to evidence an intent not "to work towards agreement of a contract." NLRB v. A-l King Size Sandwiches, Inc. (11th Cir. 1984) 732 F.2d 872.

The company's insistence on this level of control continued through its next two proposals when it added only a Safety article, which once again promised nothing more than what Respondent was obligated to do under State and Federal laws, and through its fourth proposal when it added a right of access to administer a contract which scarcely provided any meaningful role for the Union and proposed still more unilateral control in the area of wages for New or Changed Operations.

Respondent's rejection of any meaningful role for the union is particularly apparent in its grievance proposal. Respondent first four proposals did not even provide for a

grievance procedure, even though it proposed the Union give up the right to strike. And when Respondent finally added a grievance procedure, it once again proposed to control it. This is what one Court had to say about an employer who made similar proposals:

> "throughout the course of bargaining the Company insisted on retaining unilateral control of matters which are traditionally bargainable subjects; that is, wages, hours, suspensions, disciplinary actions, discharges, and other conditions of employment, while at the same time insisting that the Union forfeit its primary defense to employer abuse of control. Moreover, the Respondent's insistence that the Union give up its right to bargain about, or to arbitrate, labor disputes in return for an agreement which merely incorporated existing company practices, and merely providing the Union with the right to strike in protest of alleged violations of the contract during its term, was an unfair demand of the Union.... The Company was unwilling to offer any provisions which would give its employees or the Union anything more than they would have with no contract at all. As pointed out, the Company insisted as a price for any contract, that its employees give up their statutory rights to be properly represented by a union and contemporaneously insisted that the Union's hands be tied in the effective processing and settling of employee grievances...."
>
> * * *
>
> These findings clearly demonstrated surface bargaining used as a cloak to conceal the employer's bad faith.
>
> NLRB v. Johnson Manufacturing Co. of Lubbock (5th Cir. 1972) 458 F.2d 453.

I find the pattern of Respondent's proposals evidenced a similar intent to stymie agreement.

General Counsel also contends that Respondent refused to discuss mandatory subjects. As I have noted, little testimonial evidence was presented about the parties' discussions, but Gomez did testify generally that Respondent's negotiators did not "respond" to proposals he presented.

Gomez testified:

Q Mr. Gomez, the documents that have been introduced as Joint Exhibits include proposals that you presented at those meetings. During the meetings, did the company representatives respond to your proposals?

A Not completely.

Q And how did they respond to the proposals?

A Well, they would respond that basically (inaudible) they were not necessary and they didn't even want to discuss it. They only presented about seven articles, I believe, in the beginning, and eventually three more articles. But they never basically responded, truly, to the union proposals.

Q When they said the majority of your proposals were not necessary, did they give a reason why they were not necessary?

A Yeah, they were saying that we don't need a hiring article because we do the hiring through the labor contractor. We don't need a grievance procedure because we are good guys, you know, we're not going to do anything. We don't need the grievance procedure—there were several articles, most of the articles they were claiming that they were not needed.

Q Do you recall when you made those requests."

A I made those requests on several meetings. I don't recall exactly the dates, but most of the meetings I was requesting to the company representatives that I wanted to express the reasons why we wanted those particular articles to cover here, the Visalia certification. And most of the meetings they will respond that those articles were not necessary.

(RT:15-16.)

While this is not the most detailed evidence, it is uncontradicted and even corroborated by Respondent's failure to present counterproposals on a variety of mandatory subjects. Rejection of a union's most important demands, combined with a

failure to even offer counterproposals on so many subjects, constitutes a rejection of the bargaining obligation itself. E. Bigelow Company (1943) 52 NLRB 999.

3.

The next factors relied upon by General Counsel concern the mechanics of bargaining, specifically, the authority of Respondent's negotiators and the amount of time spent on meetings. I will consider complaints about the amount of time first. On the basis of Gomez's testimony that the longest bargaining session was only two hours long, that some were only one hour long, that one was only 20 minutes long, and that Respondent's negotiators always arrived late for such short meeting, General Counsel asks me to conclude that Respondent did not treat negotiations with the degree of diligence ordinarily applied to important business matters. According to General Counsel, the 20-minute meeting in particular epitomizes Respondent's approach because it indicates that Respondent felt it could cut any meeting short merely by announcing that it had to leave.

I do not regard the short meeting as so portentous. Since even in the conduct of the most serious affairs, other matters do distract us further, since there is no evidence about why Wharton cut the meeting short, I cannot conclude that leaving one meeting early demonstrates how lightly Wharton took the bargaining obligation. I am similarly unimpressed by the probative force of the length of the other meetings.

While the brevity of the meetings is clearly consistent with Respondent's refusal to discuss mandatory subject and to present counter-proposals, and may even be explained by these other features of Respondent's conduct, in the absence of detailed evidence about how the amount of time spent affected bargaining, I do not see that much is added to the picture of Respondent's attitude by treating the length of the meetings as independent indicia of bad faith and I decline to do so.

I feel differently about the authority of Respondent's negotiators. While the Act does not require that the person conducting negotiations have absolute authority to bind the employer, it does require that the degree of authority be sufficiently broad to permit negotiations to proceed without undue delay. Where, on the contrary, a negotiator can only listen to proposals and report them to his principal, as must have have been the case whenever the Union modified its previous proposals, (as it did, for example, at the May 13th or July 29th meetings since Hafen or Wharton had to discuss new matters with Tom Meyer), bad faith may be found. Swacle Iron Steel (1964) 146 NLRB 1068, Woodruff dba Atlanta Broadcasting (1950) 90 NLRB 808.

4.

General Counsel's final point is that Respondent unlawfully failed to provide employee information. Both the national Board and our Board have held that names, social security numbers, job classifications and addresses of unit employees are

presumptively relevant types of information, Andy Johnson (1977) 230 NLRB 308, Sam Andrews Sons (1985) 11 ALRB No. 5, ALJD, p. 19, and the national Board has held that dates of hire are also presumptively relevant. Crane Company (1979) 244 NLRB 103. As such, no particular need be shown for such information: the Union is entitled to receive it unless the employer comes forth with "effective" rebuttal to show that it is not relevant. Curtiss-Wright Corp. v. NLRB (3rd Cir. 1965) 347 F.2d 61, 69; Transportation Enterprises, Inc. (1979) 240 NLRB 551, 561. Although the Respondent argues that the Union didn't need the employee information because it presented a seniority proposal without ever having received it, I do not believe this satisfies Respondent's burden on the relevance question. To the extent the Union did want the information to prepare a seniority proposal, the mere fact that it could prepare one without it, does not prove the information was not relevant.[10] Second, according to Hafen's letter of November 10 the Union also told him that it needed the names and addresses for contract ratification, which is an independently "relevant" purpose. Finally, Gomez advised Hafen that he also wanted the information to put together a recall list, which, in the context of his proposing a hiring hall or a

[10]Otherwise, a union which did not receive requested information, but nonetheless bargained in good faith with such a handicap, would lose the "right" to receive information. See Morris, Developing Labor Law, 2nd Ed. p. 613.

centralized hiring system, appears to be another relevant purpose.

This brings me to Respondent's primary argument, namely, that it did not know that Gomez wanted the information. While Respondent offered no testimony to contradict Gomez's testimony about his oral explanation concerning the kind of information he wanted, it contends that Gomez's written requests for seniority lists (in February, April, October and November, 1988) prove that it was not on notice that he wanted anything other than what he received and, therefore, that Respondent could not have refused to provide information.

For her part, General Counsel relies on Crane Company (1979) 244 NLRB 103 for the proposition that, in the face of the Gomez's repeated requests for the same information, Respondent was on notice that he wanted more than he received. I do not read Crane Company so expansively. In that case, the employer initially provided a list containing employee names, dates of hire, wage rates and job classifications. At a meeting between the parties, the union negotiator told the company representative that he needed updated information of the same kind as that which he had received and which he explicitly referred to as a "seniority list." The ALJ credited the union negotiator's testimony that he used this shorthand expression and that the company, therefore, knew what he meant by a "seniority list." It seems to me, therefore, that Crane Company really turns on a

credibility resolution, rather than on the principle that repeated requests constitute notice. In this case, despite Gomez's testimony that he specified the sort of information he wanted, his continuing to request a "seniority list" in the face of Respondent's repeated insistence that it did not have any, causes me to doubt his testimony: under such circumstances, I find it implausible that Gomez would not have clarified what he wanted by reference to such earlier conversation.

But this finding only pertains to the period through May 10, 1988, by which time Respondent admitted that it understood Gomez wanted employee lists. At this point, it was under a duty to exercise diligence to supply the information it had. Since the statute requires employers to maintain "accurate and current payroll lists," Labor Code section 1157.3, and since it is clear that Respondent's agents, (labor contractors Rios and Morales), had a good deal of the information the Union wanted, Respondent had a duty to make reasonable efforts to obtain what information the contractors had. Minnesota Mining and Manufacturing (1982) 261 NLRB 27, 41. In the absence of any explanation as to why it delayed until May 1989 to supply any information about the employees supplied by Morales, and to obtain more complete employee information from Rios, I conclude that Respondent's delay was unreasonable and evidences bad faith. In view of my findings, I conclude that Respondent engaged in surface bargaining.

III.

THE REMEDY

Having determined that Respondent bargained in bad faith, it remains to determine the remedy. General Counsel urges that an award of makewhole is appropriate under the standards of William Pal Porto & Sons, Inc. v. Agricultural Labor Relalations Board (1987) 191 Cal.App.3d 1195. Under Dal Porto, I am required to consider whether the parties would have entered into a collective bargaining, agreement in the absence of Respondent's refusal to bargain.

> [O]nce the Board produces evidence showing that the employer unlawfully refused to bargain, the burden of persuasion shifts to the employer to prove no agreement calling for higher pay would have been concluded in the absence of the employer's refusal to bargain.
>
> Dal Porto, supra, at 1208-1209.

Despite the importance of argument on this point, Respondent has not addressed it. Nevertheless, its "hard-bargaining" defense contains the kernel of a Dal Porto argument which I do not believe I am free to ignore merely because the Dal Porto overtones are not explicit.

As indicated earlier, Respondent contends that what "ultimately" divided the parties, and arguably, therefore, what would have continued to divide them even had it not bargained in bad faith, was the Union's desire for a Master Agreement. The argument is not supported by the record. To the extent Respondent means that the Union steadfastly proposed the Salinas contract or nothing, once the Union yielded on its demand that "Visalia" be

treated as an "after-acquired store," its proposals for the Visalia unit diverged in a number of respects from the terms and conditions of the Salinas contract.

To the extent Respondent means that the Union's proposals on any or all the mandatory subjects about which Respondent offered no proposals, also represents an effort to impose Salinas terms in Visalia, Respondent is necessarily suggesting that making proposals on mandatory subjects over which an employer refuses to bargain represents deadlock. This claim, too, must be rejected, else a refusal to bargain becomes impasse.

This does not mean, of course, that there are no areas in which differences did appear to assert themselves between Respondent and the Union. Thus, from first to last the parties remained far apart on wages and on seniority. Would these differences, in the words of Dal Porto, have "doomed" negotiations. Whatever might have been the case in a bargaining situation in which Respondent had not refused to bargained about so many subjects, on a record such as this, in which the Respondent's refusal to engage the Union in discussing so many issues put the Union in the position of bargaining with itself, I cannot say that had Respondent not bargained in bad faith, the parties still would not have reached agreement. Indeed, it seems to me that to search for honestly held differences beneath this Respondent's almost complete failure to seek any accommodations would be to encourage parties to stake out differences and then to

merely go the motions in order to later claim that what they did at the table shouldn't be held against them. I find makewhole to be appropriate.

RECOMMENDED ORDER

By authority of Labor Code section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that Respondent Meyer Tomatoes, Inc. and its officers, agents, successors and assigns, jointly and severally, shall:

1. Cease and desist from:

(a) Failing or refusing to bargain collectively in good faith with the United Farmworkers of America, AFL-CIO with respect to wages, hours, and other terms and conditions of employment of its employees in the bargaining unit certified by the Board in case number 87-RC-2-VI, or in any other manner failing or refusing to so bargain with the Union regarding employees in the certified bargaining unit;

(b) Failing or refusing to provide the Union with employee information;

(c) In any other like or related manner interfering with, restraining, or coercing employees in the exercise of their rights as guaranteed by Labor Code Section 1152.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act.

(a) Upon request, meet and bargain collectively in good faith with the Union as the certified bargaining

representative of the employees in the certified bargaining unit concerning wages, hours, working conditions and other terms conditions of employment; and, if agreement is reached, embody such terms in a contract;

(b) Makewhole employees in the certified bargaining unit for all economic losses they have suffered as a result of Respondent's failure to bargain with the Union over said employees' terms and conditions of employment, such amounts to be computed in accordance with Board precedent, with interest thereon to be computed in accordance with the Board's Decision and Order in E. W. Merritt Farms (1988) 14 ALRB No. 5. The makewhole period shall extend from the November 8, 1987 until the date on which Respondent commences good faith bargaining with the Union which results in a contract or a bona fide impasse.

(c) Preserve and, upon request, make available to the Board and its agents, for examination, photocopying, and duplication by other means, all records in its possession relevant and necessary to a determination by the Regional Director, of the make-whole period and the amount due employees under the terms of this Order.

(d) Sign the Notice to Agricultural Employees, attached hereto, embodying the remedies ordered and, after its translation by a Board Agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereunder:

(e) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on Respondents' property for 60 days, the places of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered, or removed;

(f) Provide a copy of the attached Notice in all appropriate languages to each unit employee hired by Respondents during the twelve month period following the date of issuance of the Board's Order;

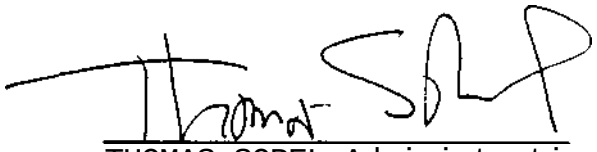
(g) Mail copies of the attached Notice in all appropriate languages, within thirty days after the date of issuance of the Board's Order, to all unit employees employed by Respondents at any time during the period from October 22, 1986, to the date of the Board's Order in this matter;

(h) Arrange for a Board agent to distribute and read the attached Notice in all appropriate languages to all of Respondents' employees in the certified bargaining unit, on company time and property, at times and places to be determined by the Regional Director. A representative of the employer will be present for the reading. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the attached Notice and/or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage

employees in order to compensate them for time lost at this reading and during the question and answer period;

(i) Notify the Regional Director, in writing, within 30 days after the date of issuance of the Board's Order, as to what steps have been taken to comply with it. Upon request of the Regional Director, Respondents shall notify him periodically thereafter in writing what further steps have been taken in compliance with this order.

DATED: September 17, 1990



THOMAS SOBEL Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Visalia Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Meyer Tomatoes Inc. had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by: (1) refusing to recognize the United Farmworkers of America AFL-CIO, the certified bargaining representative of our employees in our Gilroy operations.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize, yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

WE WILL NOT refuse or fail to provide the Union with all relevant information requested during negotiations;

WE WILL make our employees in the bargaining unit whole for all losses of pay and other economic losses they have suffered as a result of our failure and refusal to bargain with the Union.

WE WILL meet and bargain in good faith with the Union as the certified bargaining representative.

DATED:

MEYER TOMATOES, INC.

By: _____
(Representative) (Title)

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California. If you have a question concerning your rights as farmworkers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 711 N. Court St., Suite A, Visalia, California 93291. The telephone number is (209)627-0995.

DO NOT REMOVE OR MUTILATE.